

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

MINUTES OF PROCEEDINGS

HONORABLE MAGISTRATE JUDGE BRUCE J. MCGIVERIN

Time: 1 hr

COURTROOM DEPUTY: N/A

DATE: December 6, 2011

COURT REPORTER: N/A

CIV NO: 11-1218 (BJM)

COURT INTERPRETER: N/A

ABARCA HEALTH LLC, ET AL

Plaintiffs

v.

Attorneys:

Ana M. Rodríguez-Rivera, Esq.

Carla García-Benítez, Esq.

Mauricio O. Muñiz-Luciano, Esq.

PharmPix Corporation, ET AL

Defendants

Aileen Edme Vázquez-Jimenez, Esq.

Jaime A. López-Rodríguez, Esq.

Samuel F. Pamias-Portalatin, Esq.

A status conference was held before the undersigned. The above-mentioned attorneys attended. The court discussed several pending matters with counsel and made the following rulings:

(1) The court has reviewed plaintiffs' motion at DE 112 and defendants' opposition. The court finds that plaintiffs' motion adequately identifies those portions of its software program that were derived from third-party software, and those portions that plaintiffs claim are protectable. The court notes defendants' arguments that some parts of plaintiffs' software program resulted from required industry standards or are otherwise not protectable under copyright, but believes that a determination as to this matter is best left for another time. The court will appoint a Special Master pursuant to Fed. R. Civ. P. 53 to compare the source code of plaintiffs' software with the source code of defendants' software, and to submit a report regarding any similarities or likely copying. The parties informed that Judge Gelpí recently used a Special Master for a similar purpose and suggested that the same person might be used in this case. In addition, by December 14, 2011, the parties will jointly submit to the court the names and contact information of two other candidates. Said motion will not indicate which party supports which candidate. The court will contact all candidates to determine their willingness and availability, as well as their requested fees. The court will appoint the master after sharing this information and consulting with the parties. The master's fees will be paid by plaintiffs, without prejudice any motion to recover these costs from defendants if plaintiffs prevail in this case. **Plaintiffs shall file with the court a copy of their software program by December 14, 2011.**

(2) Defendants' **motion for protective order (DE 122) is denied**, without prejudice to defendants' right to raise these matters as facts underlying their counterclaims.

(3) With respect to plaintiffs' **second motion to compel discovery (DE 128), by December 14, 2011, defendants shall produce for in camera inspection all responsive documents defendants are withholding on the basis of their claim that the request seeks discovery of source code.**

(4) **Plaintiffs' motion at DE 138 is denied without prejudice** to reasserting this argument in the event that the master's report reveals any evidence of spoliation.

(5) **Plaintiffs' motion to strike the deposition of Scott Dominguez (DE 152) is granted.** See Fed. R. Civ. P. 30(b)(1), 32(a)(1)(A); Hewitt v. Hutter, 432 F.Supp. 795 (D.C. Va. 1977). However, the deposition may be used for impeachment purposes as to any testimony given by Mr. Dominguez. Moreover, the court notes that plaintiffs' counsel has asserted that Mr. Domínguez never provided them with any notes. Plaintiffs counsel will submit their own notes of their interviews with Mr. Domínguez for in camera inspection as to claims of privilege.

(6) **A hearing on plaintiffs' motion for preliminary injunction is set for March 19 -21, 2012 at 9:00 a.m.**

SO ORDERED.

S/Bruce J. McGiverin

BRUCE J. MCGIVERIN
United States Magistrate Judge